IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

WEDNESDAY, THE TENTH DAY OF NOVEMBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MS JUSTICE G.ROHINI

WRIT PETITION NO : 18842 of 2004

Between:

G.M. Jafarullah, S/o. G.M. Abdul Gaffar Miah,
Shop No.14, Nandikotkur Village & Mandal, Kurnool District.

..... PETITIONER

AND

1 The Revenue Divisional Officer, Kurnool.
2 The Mandal Revenue Officer, nandikotkur Mandal,
Kurnool District.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to Issue a writ, order or direction or particularly one in the nature of writ of mandamus, declaring the action of the 2nd respondent in issuing the oral instructions to fair price shop dealer of Shop No.14 of Nandikotkur to distribute the commodities of the petitioners Fair Price Shop No.14 of Nandikotkur village ignoring the petitioner who is a permanent dealer and whose licence and authorisation is subsisting, only yielding to the political pressures, as illegal, arbitrary and violative of Article 14, 19 and 21 of Constitution of India and consequently direct the respondents to allow the petitioner to distribute the commodities for the said shop.

Counsel for the Petitioner: MR.K.RATHANGA PANI REDDY

Counsel for the Respondents: GP FOR CIVIL SUPPLIES

The Court at the stage of admission made the following:

O R D E R:

This writ petition is filed seeking a declaration that the alleged action of the respondents in not permitting the petitioner to distribute the essential commodities without there being any justifiable reason is arbitrary and illegal.

The petitioner claims to be the authorised dealer of the Fair Price Shop No.14 of Nandikotkur Village, Kurnool District. It is alleged that in spite of the fact that the authorisation is subsisting, the second respondent failed to release the essential commodities to the petitioner for distribution to the cardholders but on the other hand orally instructed the dealer of the adjacent shop to lift the commodities. Hence, this writ petition seeking the above relief.

This Court, while directing notice before admission, by an order dated 13-10-2004, directed the respondents to permit the petitioner to lift the stocks, if the petitioner is holding valid authorisation and the same is subsisting as on that date.

In spite of service of notice, both the respondents did not choose to file any counter-affidavit. Hence, the uncontroverted averments in the writ petition shall be taken to have been admitted.

I have heard the learned Counsel for the petitioner and the learned Government Pleader appearing for the respondents.

Even assuming that the proceedings under Section 6-A of the Essential Commodities Act, 1955 or any other enquiry with regard to the alleged irregularities in distribution of the essential commodities are pending against the petitioner, the question is whether the authorities can refuse to supply the essential commodities to the petitioner without either suspending or cancelling the authorisation.

This issue has been considered by a Full Bench of this Court in OLETI TIRUPATHAMMA v. DISTRICT SUPPLY OFFICER (CITY), VISAKHAPATNAM AND OTHERS and while concluding that in such circumstances the proceedings under Article 226 of the Constitution of India are maintainable, it has been held as under:

> *"The High Court while exercising its jurisdiction under Article 226 of the Constitution of India, acts sentinel qui vive and thus it has to protect the citizen from arbitrary and capricious action of the executive. If the licensing authority themselves upon application of mind come to the conclusion that the irregularities committed by the fair price shop dealer would warrant suspension of his licence, it may do so. But, in our considered opinion, the authority without taking recourse to the said action, cannot, refuse to supply the essential commodities."*

In the light of the ratio laid down by the Full Bench in the above decision, I deem it appropriate to dispose of the Writ Petition with a direction to the respondents to supply the essential commodities to the petitioner in case he is holding a valid authorisation and the same is subsisting as on today. However, it is made clear that this order shall not preclude the respondents to initiate appropriate proceedings against the petitioner if the circumstances so warrant, following due process of law.

The writ petition is accordingly disposed of. No costs.

(G. ROHINI, J)

Date: 10-11-2004

ghn

To

1 The Revenue Divisional Officer, Kurnool.

2 The Mandal Revenue Officer, nandikotkur Mandal,
Kurnool District.

3 Two C.Cs to the G.P. for Civil Supplies, High Court Buildings,

Hyderabad (OUT)

4 Two C.D copies